

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PLAYUP, INC.,

Plaintiff(s),

V.

DR. LAILA MINTAS,

Defendant(s).

Case No. 2:21-cv-02129-GMN-NJK

Order

[Docket Nos. 238, 257]

Pending before the Court is Defendant's motion to disqualify opposing counsel and for
sons. Docket No. 238. Plaintiff filed a response in opposition. Docket No. 248. Defendant
u reply. Docket No. 272. Also pending before the Court is Plaintiff's counter-motion for
ons. Docket No. 257. Defendant filed a response in opposition. Docket No. 274. Plaintiff
u reply. Docket No. 282. The motions are properly resolved without a hearing. *See* Local
78-1. For the reasons discussed more fully below, both motions are **DENIED**.¹

“Disqualification is a drastic measure which courts should hesitate to impose except when absolutely necessary.” *Hernandez v. Guglielmo*, 796 F. Supp. 2d 1285, 1289-90 (D. Nev. 2011).² “Courts deciding attorney disqualification motions are faced with the delicate and sometimes

¹ Resolution of a motion to disqualify counsel is a matter within a magistrate judge's authority. *Quatama Park Townhomes Owners Ass'n v. RBC Real Estate Finance, Inc.*, 365 F. Supp. 3d 1129, 1133 (D. Ore. 2019); see also *Bona Fide Conglomerate, Inc. v. SourceAmerica*, No. 3:14-cv-00751-GPC-DHB, 2016 WL 4361808, at *5 (S.D. Cal. Aug. 16, 2016) (collecting cases). Resolution of a motion for non-dispositive sanctions is a matter within a magistrate judge's authority to resolve. *Maisonville v. F2 Am., Inc.*, 902 F.2d 746, 747 (9th Cir. 1990).

² Federal courts apply state law to decide whether to disqualify a lawyer. *In re Cnty. of Los Angeles*, 223 F.3d 990, 995 (9th Cir. 2000). To the extent the Nevada Supreme Court has not addressed a particular issue pertinent to the pending motion, the Court must predict how it would rule using as guides intermediate appellate court decisions, decisions from other jurisdictions, statutes, treatises, and restatements. *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 583 F.3d 1232, 1237 (9th Cir. 2009).

1 difficult task of balancing competing interests: the individual right to be represented by counsel
 2 of one's choice, each party's right to be free from the risk of even inadvertent disclosure of
 3 confidential information, and the public's interest in the scrupulous administration of justice.
 4 While doubts should generally be resolved in favor of disqualification, parties should not be
 5 allowed to misuse motions for disqualification as instruments of harassment or delay." *Nevada*
 6 *Yellow Cab Corp. v. Eighth Judicial Dist. Ct.*, 123 Nev. 44, 53 (2007). "Because of this potential
 7 for abuse, disqualification motions should be subjected to particularly strict judicial scrutiny."
 8 *Optyl Eyewear Fashion Int'l Corp. v. Style Cos., Ltd.*, 760 F.2d 1045, 1050 (9th Cir. 1985) (internal
 9 quotations and citations omitted).

10 The movant bears the burden of establishing facts to justify disqualification. *Hernandez*,
 11 796 F. Supp. 2d at 1289. A court may disqualify an attorney from representing a party when there
 12 is (1) a clear violation of the professional rules of conduct (2) that affects the public view of the
 13 judicial system or the integrity of the Court and (3) is serious enough to outweigh the party's
 14 interest in having the counsel of its choice. *Kalinauskas v. Wong*, 808 F. Supp. 1469, 1472 (D.
 15 Nev. 1992). The concerns identified in the motion to disqualify must not be "merely anticipatory
 16 and speculative." *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*,
 17 658 F.2d 1355, 1361 (9th Cir. 1981). "Given the seriousness of the matter, the movant has a 'high
 18 standard of proof to meet in order to prove that counsel should be disqualified.'" *Shahroki v.*
 19 *Harter*, No. 2:21-cv-01126-RFB-NJK, 2021 WL 4981565, at *2 (D. Nev. Oct. 26, 2021) (quoting
 20 *FLS Transp. Servs., Inc. v. Casillas*, Case No. 3:17-cv-00013-MMD (VPC), 2017 WL 6043611,
 21 at *3 (D. Nev. Dec. 6, 2017)).

22 Defendant has not established a clear violation of the governing rules. Her motion is
 23 predicated on alleged violations of Rule 3.6(a) of the Nevada Rules of Professional Conduct, which
 24 (subject to limitations) prohibits a lawyer from making extrajudicial public statements that the
 25 lawyer knows or should know "will have a substantial likelihood of materially prejudicing an
 26 adjudicative proceeding in the matter." Although Defendant has identified extrajudicial statements
 27 by Plaintiff's counsel, she has not shown that there is a substantial likelihood that these statements
 28 may "materially prejudice" this proceeding. Material prejudice is unlikely given that trial is not

1 imminent and has not even been set yet. *See, e.g., Muhaymin v. City of Phoenix*, No. CV-17-
 2 04565-PHX-SMB, 2020 WL 3050572, at *3 (D. Ariz. June 5, 2020). Moreover, any lingering
 3 concerns as to prejudice from the identified statements can be ameliorated at the time of trial
 4 through voir dire or other appropriate means. *See, e.g., S.E.C. v. Christian Stanley, Inc.*, No. CV
 5 11-7147-GHK (MANx), 2012 WL 13012479, at *2 (C.D. Cal. June 4, 2012) (citing *Ignacio v.*
 6 *People of Territory of Guam*, 413 F.2d 513, 517 (9th Cir. 1969)).³ Hence, the Court is not
 7 persuaded that there is a substantial likelihood that counsel's remarks would materially prejudice
 8 the proceedings.⁴ Because Defendant has not established a clear violation of a governing rule of
 9 conduct, the motion to disqualify opposing counsel and for monetary sanctions will be denied.⁵

10 The Court is also unpersuaded by Plaintiff's counter-motion for monetary sanctions. That
 11 motion is predicated on the assertion that Defendant's motion to disqualify is frivolous and was
 12 motivated to gain a tactical advantage. *See* Docket No. 257 at 24-26. Although the Court is
 13 denying the motion to disqualify, it is not persuaded that sufficient grounds exist to impose
 14 monetary sanctions for filing it.

15 Accordingly, Defendant's motion to disqualify opposing counsel and for sanctions is
 16 **DENIED**, and Plaintiff's counter-motion for sanctions is also **DENIED**.

17 IT IS SO ORDERED.

18 Dated: January 20, 2023

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 Nancy J. Koppe
 United States Magistrate Judge

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 23 ³ Defendant argues that the statements are likely to reach significant numbers of potential
 24 jurors given the prevalence of gaming employment in this District. Docket No. 238 at 5, 21. Such
 25 an assertion was not meaningfully developed, including failing to provide any information as to
 26 the distribution or readership statistics for the subject media.

27 ⁴ Plaintiff disputes that the statements otherwise violate the rule, *see* Docket No. 248 at 27-
 28 (arguing that the substance of the statements was permissible), but the Court need not resolve
 29 that there is no substantial likelihood of materially prejudicing the proceedings regardless.

30 ⁵ The papers at times stray well beyond the subject matter of the motion to disqualify. The
 31 Court herein addresses the request for sanctions only as it relates to the motion to disqualify. *See*
 32 Local Rule IC 2-2(b) (separate papers must be filed for different requests).